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1 that Paula Mammarella made the request you
 2 mentioned to Mike Martin for certain kinds of
 3 information that that was just a standard
 4 ordinary-course type of request for more
 5 information?
 6 MR. COGAN: Objection.
 7 MR. POHL: Objection.
 8 A. I believe it would have been, yes.
 9 Q. Do you recall any other kinds of requests that
 10 were made of AHERF management, during the
 11 limited time you were there, for more
 12 information about the AHERF entities?
 13 A. No, I don't.
 14 Q. Do you recall ever, while you were at PNC, any
 15 requests being made of AHERF management for PNC
 16 representatives to be able to visit certain
 17 facilities of AHERF?
 18 A. I'm not aware of any.
 19 Q. And do you recall any demands ever being made
 20 of AHERF management in terms of actions that
 21 they should take?
 22 MR. COGAN: Objection.
 23 A. Demands of AHERF management that they should
 24 take?
 25 Q. Any demands of AHERF management in terms of

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1 actions that they should take?
 2 MR. POHL: You're saying demands by
 3 PNC on AHERF?
 4 MR. TERUYA: Yes, by PNC on AHERF.
 5 A. What types of actions are you referring to?
 6 Q. Any type of business decisions in terms of
 7 whether it be how to operate a hospital --
 8 A. That's lender's liability. Banks don't go
 9 there. That's lender's liability. We do not
 10 have the right to tell a company how to run its
 11 business, unless it's under mutual agreement
 12 and court protection.
 13 Q. Could you explain what you mean by that?
 14 A. Lender's liability?
 15 Q. Yes. What do you mean by the phrase lender's
 16 liability?
 17 A. Lender's liability, I guess in your terms,
 18 would be tortious interference with the actions
 19 of management in the day-to-day running of the
 20 business which is as close as I can come. I'm
 21 not an attorney.
 22 Q. Sure.
 23 A. I mean, lender's liability is a legal concept.
 24 I'm giving you a layman's interpretation of it.
 25 Q. I was just trying to understand what you meant

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1 by it in the context of your last answer?
 2 MR. POHL: He's explained that he
 3 believes that a business entity like the bank
 4 cannot tell a lender how to run their business.
 5 THE WITNESS: Tell a borrower.
 6 MR. POHL: Or, I'm sorry, a borrower
 7 how to run their business.
 8 BY MR. TERUYA:
 9 Q. Let me just ask you to make sure I got it on
 10 the record.
 11 So your understanding was that PNC
 12 had no right to tell AHERF management how to
 13 run the business of AHERF?
 14 MR. COGAN: Objection.
 15 Q. Is that your understanding?
 16 A. I wouldn't limit it specifically to AHERF.
 17 Banks simply cannot. I mean, there are legal
 18 penalties for doing such.
 19 Q. Just with respect to the AHERF entities, was it
 20 your understanding that PNC had no right to
 21 tell AHERF management how to run the business
 22 of AHERF?
 23 MR. POHL: Objection.
 24 MR. COGAN: Objection.
 25 A. I think you're asking me for a legal opinion.

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1 I don't think I'm in a position to respond to
 2 that.
 3 Q. I'm just asking for your understanding based on
 4 your experiences?
 5 A. I'm trying to respond to it in a way that I
 6 think I can respond. I think I've probably
 7 gone beyond what I should try to say. I'm
 8 trying to be understanding here, but I don't
 9 think I can respond to that question.
 10 Q. Let me divorce it from the concept of lender's
 11 liability, and let me just ask you, generally,
 12 did you think while you were at PNC, that PNC
 13 had a right to make demands of AHERF management
 14 in terms of how it was running AHERF's
 15 business?
 16 MR. COGAN: Objection.
 17 MR. POHL: Objection. It's the same
 18 question you just asked. He's given you his
 19 answer. Whether you divorce it from lender's
 20 liability, he's given you his answer, and he's
 21 told you what he thinks he can respond to.
 22 MR. TERUYA: I'm just trying to make
 23 sure I have his answer.
 24 MR. POHL: Well, you do.
 25 A. I've tried to be as clear as I can. I don't

25 (Pages 94 to 97)

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1 think I can say anything else about it. I
2 don't think I -- there's nothing else I can add
3 to it.

4 Q. So was it your understanding that PNC didn't
5 have that right?

6 MR. POHL: Objection.

7 MR. COGAN: Objection.

8 Q. And I'll move on. I mean, I'm just trying
9 to --

10 MR. POHL: Yeah, you should.

11 Q. -- understand your answer.

12 A. I can't respond to it. I think I've responded
13 as much as I can.

14 Q. Okay.

15 MR. COGAN: You know, just in all
16 fairness, I don't think it's a proper question.
17 After all, you've shown one credit agreement
18 that we know. In all the depositions we've
19 done, there are other credit agreements. Those
20 credit agreements do define the right and
21 obligations of the parties.

22 MR. TERUYA: I was just asking for
23 his understanding based on what he knew.

24 MR. COGAN: I don't think that's the
25 way you were asking the question.

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1 update to the extent that we received quarterly
2 financial statements, but, again, the emphasis,
3 because of reliability questions --
4 generically, with quarterly financial
5 statements, the emphasis was placed upon those
6 annual financial statements which were audited
7 and certified by the accountants.

8 Q. Do you know, other than financial statements,
9 whether she considered other types of or
10 sources of information about AHERF entities in
11 preparing these credit analyses?

12 MR. COGAN: Objection, and the basis
13 of my objection is the credit analyses have
14 been marked as exhibits. They pretty much
15 speak for themselves.

16 MR. TERUYA: And I'm asking about
17 what sources of information were considered?

18 MR. COGAN: And you deposed Paula
19 Mammarella, and she's the person who is best
20 situated to tell you the information she's
21 relying on, and then her document, the credit
22 analysis, is the best source as well.

23 A. As a not-for-profit organization, it is
24 difficult to obtain information vis-a-vis a
25 publicly-held entity. Within the context of

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1 MR. POHL: No, definitely not. I
2 think he's given you -- made a good faith
3 effort to answer your question.

4 BY MR. TERUYA:

5 Q. Do you know whether PNC ever wrote, at any
6 point in time while you were there, to the
7 AHERF board about any issues relating to the
8 AHERF entities?

9 A. I have no knowledge about that.

10 Q. And aside from the question of whether PNC had
11 any right to do so, do you know of any requests
12 that were made by PNC to AHERF management for
13 AHERF management to take certain actions?

14 MR. COGAN: Objection.

15 MR. POHL: Objection.

16 A. I have no knowledge.

17 Q. You have no knowledge of any such requests?

18 A. Correct.

19 Q. You mentioned that from time to time Paula
20 Mammarella prepared certain credit analyses?

21 A. Correct.

22 Q. And do you know what kinds of information she
23 considered in performing those analyses?

24 A. The primary emphasis was placed upon audited
25 financial statements. There would have been an

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1 not-for-profit institutions, there are ranges
2 of information which are provided by borrowers.

3 The available information in the case
4 of AHERF, which management provided, which we
5 had access to, was very small. The amount of
6 public information about AHERF's operations,
7 its entities was, I would say, virtually nil.

8 I don't profess to know everything that was out
9 there, but I would say it was minimal at best,
10 and probably nothing in that information would
11 have in any way impacted the analysis from the
12 limited information that we had been provided
13 by the company.

14 Q. What kinds of searches did you perform for
15 information that was publicly available about
16 the AHERF entity?

17 A. You go on the Internet, but when you're going
18 on the Internet for something like that, you
19 just won't find it. It's just not out there.
20 You might find a newspaper article. You might
21 find a magazine article. It probably would not
22 be entity-specific, you know, and I'm talking
23 about the window that I was there. I don't
24 know what happened pre-'98. I don't know what
25 happened, in essence, '99 on. It would have

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1 Explaining Why the Ax Fell for 1,200, and let
 2 me ask you, I know this article predates your
 3 time at PNC, but did you ever come to learn,
 4 during your time at PNC, about the fact that
 5 AHERF had fired or laid off about 1,200
 6 employees in late '97?
 7 A. I don't have any specific knowledge about that.
 8 Mike Martin did say to me that they had made
 9 some adjustments in head count.
 10 Q. Do you recall having any reaction to the
 11 statement by Mike Martin that there had been
 12 some adjustments in head count?
 13 A. It's not atypical in this industry.
 14 Q. Do you recall whether there was any discussion
 15 of further cutbacks at AHERF at or around early
 16 '98?
 17 A. I don't recall any.
 18 Q. Was -- did you ever have any discussions with
 19 anyone at AHERF, other than the statement you
 20 mentioned by Mike Martin, about potential for
 21 further cutbacks at AHERF?
 22 A. I don't recall any.
 23 Q. Do you recall ever having any discussions about
 24 the closure of Mt. Sinai Hospital by AHERF?
 25 A. I don't recall any.

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1 Q. Do you recall ever having any discussions with
 2 anyone at AHERF about the closure of any or the
 3 potential closure of any of AHERF's hospitals
 4 in the Philadelphia region?
 5 A. There may have been discussion about the City
 6 Line Hospital, I believe.
 7 Q. Is it City Avenue Hospital?
 8 A. There was a hospital on City Line, I believe.
 9 That would have been the only thing.
 10 Q. What general recollection do you have about a
 11 discussion about closing a hospital on City
 12 Line?
 13 A. They only stated they were considering doing
 14 that.
 15 Q. So, to the best of your recollection, in early
 16 '98, AHERF was considering closing another --
 17 or a hospital?
 18 A. Correct.
 19 Q. Do you recall having any reaction at the time
 20 to that statement?
 21 A. It's management's decision.
 22 Q. Did you think it was a good idea for AHERF to
 23 close a hospital at that point in time?
 24 A. Management has to make its assessment of the
 25 best utilization of the assets. If they came

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1 to the conclusion it was appropriate, then it's
 2 their decision, and I would have no basis to
 3 disagree with that.
 4 Q. Did you have any view of your own or did you
 5 come to form any view of your own as to whether
 6 it was appropriate or a good idea for
 7 management to close another hospital?
 8 A. No.
 9 Q. Let me show you what's been -- I'm sorry. You
 10 can set aside that exhibit, and let me show you
 11 what's been marked as Exhibit No. 1798 which is
 12 a February 6, 1998 letter from Kelly Mertz to
 13 Paula Mammarella which has Bates No. PNC 188.
 14 Let me ask you, I know your name is
 15 not on this document, did you have any
 16 understanding of when the -- first off, when
 17 AHERF's financial or fiscal years ended?
 18 A. I don't recall it as we sit here.
 19 Q. Do you see how in the entry number one, there's
 20 a reference to -- on this document, there's a
 21 reference to consolidated audited financial
 22 statements of AHERF, including combining
 23 financial statements of DVOG, as of and for the
 24 fiscal year ended June 30, 1997?
 25 A. Yes, sir.

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1 Q. Does looking at that at all refresh your
 2 recollection as to when AHERF's fiscal years
 3 ended?
 4 A. I'm assuming it's June 30, which is not
 5 atypical. June 30, December 30 tend to be the
 6 dates for hospitals like this to close.
 7 Q. Do you recall ever coming to learn of when
 8 AHERF's fiscal year 1997 financial statements
 9 were delivered to AHERF -- I'm sorry, to PNC?
 10 A. I don't know the date they were doing that, no.
 11 Q. Do you recall ever having any discussion about
 12 any delay on the part of AHERF in delivering to
 13 PNC the financial statements for fiscal year
 14 1997?
 15 A. I have no knowledge, but that also precedes my
 16 employment at the bank.
 17 Q. Okay. Set aside 1798.
 18 Let me show you what's been
 19 previously marked as Exhibit No. 1800 which
 20 appears to be the consolidated financial
 21 statements for the year ended June 30, 1997 for
 22 AHERF, and let me ask you, as you look through
 23 it, whether you recognize this document as one
 24 that you might have seen before?
 25 A. I believe I saw this one, yes.

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1 Q. Do you recall when, approximately, during your
2 tenure, you would have first seen this
3 document?
4 A. Probably within the first 30 days of my
5 employment with the bank.
6 Q. Did you review the entirety of this document,
7 the fiscal year '97 financial statements, for
8 AHERF?
9 A. I would have read through it in its entirety,
10 yes.
11 Q. What kind of review did you perform of this
12 financial statement?
13 A. That's a very, very broad question.
14 Q. I mean, in addition to reading through it, was
15 there any particular kind of task that you
16 performed with respect to your review of the
17 financial statements?
18 A. May I back up for a second just to give you
19 bit of an overview?
20 Q. Sure.
21 A. Audited financial statements are the most
22 important document that banks rely upon in
23 trying to assess the financial condition of a
24 borrower. Financial statements, by definition,
25 the way I read financial statements, are the

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1 summaries of the actions which management have
2 taken over the time frame for which the
3 statements are issued, and they summarize those
4 actions in accounting terms.
5 Understanding the notes to the
6 financial statements are every bit as critical
7 as understanding the numbers. So when I read a
8 financial statement, I start by reading the
9 notes to the financial statements, and when I
10 start reading the notes, I want to know on what
11 basis these statements are prepared, what level
12 of work the accountant has done. In an entity
13 like this, I would want to try to get and see
14 combining financial statements so I understand
15 what the component hospitals are doing. I look
16 it in terms of debt structure. I look at it in
17 terms of liquidity. I look at it in terms of
18 cash flow, and this is really the only time
19 that we get financial statements, we get an
20 audited statement that you have an outside
21 third party who has reviewed in detail the
22 financial statements, making attestations as to
23 the financial condition of the borrower, and
24 that analysis -- the work that they have done
25 going into this is extremely important to me as

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1 a reader of this information. So I focus on
2 liquidity, I focus on cash flow, I focus on
3 debt maturities, issues like that, when I read
4 financial statements, and then what I try to do
5 is I try to take the information I know about
6 the company and overlay that against the
7 financial statements that I've been presented
8 and see if it appears reasonable.
9 Q. Do you recall whether, upon your review of the
10 fiscal year '97 financial statements for AHERF,
11 anything appeared unreasonable based on what
12 you knew at the time?
13 A. No, there was nothing that appeared
14 unreasonable.
15 Q. At that time, when you first were reviewing the
16 fiscal year '97 financial statements for AHERF,
17 how much information did you have at that point
18 in time about AHERF as a company and its
19 performance?
20 A. We had the audited financial statements which
21 were, you know -- which you have in front of
22 you now.
23 I believe I used this as the starting
24 point, you know, the crux of trying to
25 understand what AHERF was in its most recent

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1 time frame, most recent accounting period. So
2 my focus was on this, trying to understand
3 where they were as of the last accounting
4 period. Now, you were, by the time I joined
5 the bank, nine months out of date. So, to the
6 extent that we did have quarterly financial
7 statements, I would have looked at those in
8 terms of trying to identify trends, and trends
9 had changed, what the liquidity might have
10 been -- what might have been happening with
11 liquidity at the entity and what might have
12 been happening with cash flow, but this would
13 have been the foundation upon which my
14 assessment of AHERF was based.
15 Q. Okay. You mentioned that in reviewing
16 financial statements such as this, you would
17 overlay your understanding of what was
18 happening at a company to assess whether
19 financial statements were reasonable, and I was
20 wondering, with respect to this particular set
21 of financial statements, under the
22 circumstances you were in at PNC, what
23 information about AHERF did you overlay on
24 these financial statements, if any?
25 A. It would have been whatever I could have read

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1 in the file about the nature of the operations
2 of the company, and by doing that, I would
3 arrive at some type -- when I say reasonable, I
4 mean some type of judgment as to whether what
5 the company says it's doing and what the
6 financial statements say are happening are
7 consistent. That's what I mean by reasonable.

8 If there's an inconsistency between
9 what I understand management's trying to do and
10 the financial statements, then I ask my
11 questions, and under that criteria, and based
12 upon my limited knowledge at the time when I
13 came on board with PNC, there seemed to be
14 consistency in terms of what they were saying
15 and what the financial statements said, albeit
16 nine months out of whack, and I wouldn't know
17 that again until I had audited statements which
18 would probably be towards the end of '98 for
19 the fiscal year end '98.

20 Q. You mentioned that the fiscal year '97
21 financial statements, for the time you would
22 have been reviewing them, were nine months old
23 or out of whack?

24 A. Correct.

25 Q. Was that of any concern to you?

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1 A. Any time you get financial statements -- let me
2 back up.

3 Financial statements are a picture of
4 the condition of a borrower at a fixed point in
5 time. The further you get from that point in
6 time, the greater the possibility -- not
7 probably, but possibility that there could be
8 change from that financial condition, concept
9 of time and risk.

10 Q. And did you mention that one way that you tried
11 to be able to understand how, if at all, the
12 company had changed since the time the fiscal
13 year '97 financial statements -- or since the
14 date of the fiscal '97 financial statements was
15 to look at quarterly financial statements?

16 A. Correct. That was the only information, from a
17 financial standpoint, that was available to us.
18 That was the barometer that you had, the
19 interim barometer for whatever it was worth.

20 Q. Okay. And would you have been relying on the
21 quarterly financial statements as the interim
22 barometer of how AHERF was doing since the last
23 financial statements that were audited?

24 A. With the appropriate caveats that I stated this
25 morning in terms of reliance on quarterly

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1 financial statements, correct.

2 Q. And you mentioned one of the things you'd look
3 to quarterly -- or one set of things that you'd
4 look to quarterly financial statements for was
5 to look if there were any trends that you
6 perceived and to look at the liquidity and cash
7 flow position, is that right?

8 A. Correct.

9 Q. In terms of this particular document, the
10 fiscal year '97 financial statements, are there
11 any particular sections of it that you would
12 look to to assess the liquidity position of the
13 company?

14 A. You look at the cash. You look at marketable
15 investments -- I'm not looking at the balance
16 sheet, but this is typically what you'd look
17 at. Cash, marketable investments, fund
18 balances in terms of liquidity. Then you'd
19 look at cash flow, because that's either a
20 contributor to or detractor from cash flow, and
21 you look at capital structure, because that
22 could represent a potential call on liquidity
23 as far as debt maturities.

24 Q. Okay. And how about with respect to cash flow,
25 is there any particular section you'd look to?

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1 A. You want to make sure that your entities are,
2 you know, generating positive cash flow, and
3 hopefully it's not from just depreciation; it's
4 from operating profits. That's very important.
5 So you focus on where is the profitability
6 coming from? Where is the cash flow coming
7 from?

8 Q. Is the analysis or the review to determine
9 where the cash flow is coming from centered on
10 any particular part of a set of financial
11 statements?

12 A. You have the statement of cash flows contained
13 within audited financial statements which is
14 the starting point, and that balance sheet is
15 used -- the income statement and balance sheet
16 are used to derive that, so you refer back to
17 those two sections of the audited financial
18 statements. Then you have to go into the notes
19 for some of the information. Interest paid,
20 for example, is not the same as interest
21 expense. There's a difference between accrual
22 and payable. So you have to go through
23 financial notes to understand what is a cash
24 and what is a non-cash item.

25 Q. You mentioned that you would have looked at

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THE VIDEOGRAPHER: Excuse me, sir.

At some point, there was a -- the camera didn't record just for like, maybe, your first two questions. I know you've objected. So if you could go back to those at some point, there's a risk that -- it may have gotten it, but just to be completely sure.

MR. COGAN: And I'll -- just to save you reading that question, I'll just ask it again.

THE VIDEOGRAPHER: Not the ones you just asked.

MR. COGAN: No, I understand. I understand.

BY MR. COGAN:

Q. You have in front of you page 26, do you not?

A. Yes, I do.

Q. And that's the report of the independent accountants on the consolidating and combining financial information, is that right?

A. Yes, sir.

Q. And is it your understanding, based upon that report, that the consolidating financial information has at least been subjected to the

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a whole?

A. Yes, sir.

Q. And do you attach some significance to that statement by the auditors with respect to your review of the consolidating and combining financial information?

MR. TERUYA: Objection.

A. It's very important.

Q. Do you take some comfort from the fact that the combining financial information has been subjected to the same sort of auditing procedures that were applied by the auditors with respect to the consolidated financial information?

MR. TERUYA: Objection.

A. Yes, because it tells us also what each entity within the group is doing. So we have a more detailed view of the financial statements as they roll up into the consolidated financial statements.

Q. Now, I understand from the videographer that we may not have gotten a couple of my first questions, so let's make sure. We'll go back, and I'll try to recapture them and ask you again.

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same auditing procedures that the auditors, in this instance Coopers & Lybrand, applied with respect to the audit of the consolidated financial statements?

A. Per this statement, that's correct.

Q. Okay. And have the auditors there opined that the consolidating financial information is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole?

A. You're back on the first opinion, first page, or are you back on page 26?

Q. No, I'm on page 26. You see where it says -- well, let me ask you this -- let me strike that question and ask you this: Do you see where in the report they say in the last two lines, Coopers & Lybrand expresses, "And our opinion is fairly stated in all material respects in relation to the consolidated financial statements taken as a whole?"

A. Yes, sir.

Q. And do you understand that to mean that the consolidating financial information is fairly stated in all material respects in relation to the consolidated financial statements taken as

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Mr. Dickson, given your experience in banking, I think I asked you, as a creditor, with your experience and background, would you want to know the financial statements that you were relying upon for a credit risk contained GAAP violations?

MR. TERUYA: Objection.

A. Absolutely.

Q. And similarly, sir, with respect to a credit risk that you were responsible for, would you want to know that the financial statements that you were being provided contained material misstatements?

MR. TERUYA: Objection.

A. Definitely.

Q. I take it it's important for you to have the comfort that when you're reviewing audited financial statements, that they be free of material misstatements?

A. Absolutely. The financial statements are the critical raw material that we use to start a financial analysis. That raw material, if it can't be relied upon, in essence, cuts out the foundation for the credit analysis, because we're relying upon that party to perform its

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responsibilities in terms of the auditing and making sure it's in compliance with GAAP, et cetera, et cetera, so that we can make an assessment of cash flow. So if the information contained in that report is not correct, then, by definition, the analysis which we are doing on that particular credit is flawed. So we have to have that confidence. We have to have the correct information in order for our analysis to be correct.

Q. And so, consequently, if you're provided audited financial statements and the auditor has provided a qualified opinion or an adverse opinion, that's a red flag to you to tell you you can't, perhaps, rely on the financial statements as you otherwise would with respect to audited financial statements that are accompanied by an unqualified opinion?

MR. TERUYA: Objection.

A. Very much so.

Q. There was another exhibit that I wanted to ask you about, Exhibit 1798, which I think you have right in front of you there. It was the letter from Kelly Mertz to Paula Mammarella dated February 6, 1998.

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their review prior to your arrival, you may or may not be aware of what they may have done, is that right?

A. That's correct.

Q. And as I think I understood your testimony, you didn't review -- change that. You reviewed what's been marked as Exhibit 1800 some time within the first 30 days of your arrival at PNC, right?

A. Correct.

MR. COGAN: That's all the questions I have, Mr. Dickson. Thank you.

EXAMINATION

BY MR. TERUYA:

Q. I have a few questions on redirect.

Mr. Cogan asked you a number of questions about whether, based on your experience, you would have wanted to know about GAAP violations, material misstatements, non-compliance or unqualified or adverse opinions. Do you recall that?

A. Yes, sir.

Q. And am I correct that consistent with what you

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A. Yes, sir.

Q. Do you have that?

A. Yes, I do.

Q. Now, of course, February 6, 1998 predates your arrival at PNC, doesn't it?

A. Yes, sir.

Q. In fact, I think your testimony was you didn't join PNC until March 10, 1998, is that right?

A. Correct.

Q. And is it your understanding that one of the documents that accompanied the letter to Ms. Mammarella was, in fact, the June 30, 1997 consolidated audited financial statements for AHERF which has been marked as Exhibit 1800?

A. Yes, sir.

Q. Would it be your understanding that Paula Mammarella and others would have reviewed the financial statements at or about the time they were received?

A. Either at or very shortly thereafter, yes.

Q. And, of course, that would have been a review of those financial statements prior to your arrival, correct?

A. It may have been.

Q. And if they took any actions with respect to

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said at the end of my questioning, you don't know whether, in fact, there were any GAAP violations, material misstatements, non-compliance with covenants or unqualified or adverse opinions expressed at any time, is that right?

MR. POHL: Objection.

A. I don't know is how I responded then and I would respond now.

Q. And you don't know what steps, if any, would have been taken by anyone in response to learning of GAAP violations, material misstatements, non-compliance or unqualified or adverse opinions, is that right?

MR. POHL: Objection.

A. Yes.

Q. And you don't know what effect, if any, any steps that might have been taken in response to learning of any of those items would have had, in fact, is that right?

MR. POHL: Objection.

A. I don't know.

Q. And you also, of course, don't know whether any steps that might have been taken in reaction to learning of any of those items would have been

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1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
 2 COUNTY OF ALLEGHENY) S H E E T

3 I, JEFFREY R. DICKSON, have read the foregoing
 4 pages of my deposition given on Wednesday, August 13,
 5 2003, and wish to make the following, if any,
 6 amendments, additions, deletions or corrections:
 7 Page/Line Should Read Reason for Change
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19

20 In all other respects, the transcript is true and
 21 correct.

22 _____
 23 JEFFREY R. DICKSON

24 Subscribed and sworn to before me this
 25 _____ day of _____, 2003.

 Notary Public
 AKF Reference No. JB76783

Page 299

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 2 WESTERN DISTRICT OF PENNSYLVANIA

3 -----
 4 THE OFFICIAL COMMITTEE OF)
 5 UNSECURED CREDITORS OF)
 6 ALLEGHENY HEALTH, EDUCATION &)
 7 RESEARCH FOUNDATION,)
 8)
 9 Plaintiff,)
 10)
 11 -vs-) Civil Action
 12) No. 00-684
 13 PRICEWATERHOUSECOOPERS, L.L.P.)
 14)
 15 Defendant.)

16 * CONFIDENTIAL EXCERPT *

17 -----
 18 VIDEOTAPE DEPOSITION OF: JEFFREY R. DICKSON
 19 -----

20 DATE: August 13, 2003
 21 Wednesday, 9:00 a.m.

22 LOCATION: MANION McDONOUGH & LUCAS
 23 14th Floor, USX Tower
 24 Pittsburgh, PA 15219
 25 412-232-0200

TAKEN BY: Defendant

REPORTED BY: JoAnn M. Brown, RMR, CRR
 Notary Public
 AKF Reference No. JB76783

Ebert Dep.

In The Matter Of:

***AHERF v.
PRICEWATERHOUSECOOPERS, LLP.***

LEONARD T. EBERT
September 17, 2003

LEGALINK MANHATTAN
420 Lexington Avenue - Suite 2108
New York, NY 10170
PH: 212-557-7400 / FAX: 212-692-9171

EBERT, LEONARD T.



LEGALINK®

A WORDWAVE COMPANY

LEONARD T. EBERT

<p style="text-align: right;">Page 46</p> <p>1 Leonard T. Ebert</p> <p>2 receivable were 192,907,000 and then in 1995 it</p> <p>3 escalated to 255,432,000?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Do you recall being aware as of the end of</p> <p>6 fiscal year '95 about the growth of AHERF's accounts</p> <p>7 receivable over the past fiscal year?</p> <p>8 MR. UNICE: Objection. Lack of</p> <p>9 foundation.</p> <p>10 A. I don't recall.</p> <p>11 Q. If I could just ask you to turn to the income</p> <p>12 statement on the next page, I'm going to ask you to</p> <p>13 look at the line item of loss from operations?</p> <p>14 A. Yes.</p> <p>15 Q. And again I'm going to -- do you see that</p> <p>16 AHERF had lost 12,513,000 in 1994 and then lost an</p> <p>17 additional 7,845,000 in fiscal year 1995?</p> <p>18 A. Yeah, I see it.</p> <p>19 Q. Do you recall if at the end of fiscal year</p> <p>20 1995 you were aware that AHERF had lost -- had</p> <p>21 additional losses of operations of roughly \$7.8</p> <p>22 million in the past fiscal year?</p> <p>23 MR. UNICE: Objection. Lack of</p> <p>24 foundation.</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 48</p> <p>1 Leonard T. Ebert</p> <p>2 Q. Do you recall if during the time period I</p> <p>3 just mentioned you were paying significant heed to</p> <p>4 what the finances of AHERF were, or were other</p> <p>5 factors in your life such that this was not a</p> <p>6 concern at that point?</p> <p>7 A. I'm sorry. I didn't read you on that one.</p> <p>8 Q. Okay. What I basically asked is from the</p> <p>9 period of the date of this, September 11, 1996,</p> <p>10 through the end of your time on the AHERF board, my</p> <p>11 question is basically, do you recall if you were</p> <p>12 paying attention to AHERF's finances, or were other</p> <p>13 factors in your life such that AHERF's finances were</p> <p>14 no longer a priority?</p> <p>15 A. I don't recall, number one, and, number two,</p> <p>16 the other factors in my life undoubtedly, rightly or</p> <p>17 wrongly, took precedence.</p> <p>18 Q. Then let's move on from this document,</p> <p>19 Mr. Ebert.</p> <p>20 MR. LUFT: I would like to mark as</p> <p>21 Exhibit 2024 a document that has been Bates-stamped</p> <p>22 GOV 71626 through 71636.</p> <p>23 (Exhibit 2024 was marked for</p> <p>24 identification.)</p> <p>25 Q. Mr. Ebert, the document that I've handed you,</p>
<p style="text-align: right;">Page 47</p> <p>1 Leonard T. Ebert</p> <p>2 Q. Let's move on from this document then and I</p> <p>3 will show you what has previously been marked as</p> <p>4 Exhibit 1661. Do you recognize this document,</p> <p>5 Mr. Ebert?</p> <p>6 A. Yes.</p> <p>7 Q. What is this document?</p> <p>8 A. It is the audited financial statements for</p> <p>9 fiscal '96.</p> <p>10 Q. For AHERF?</p> <p>11 A. Oh, yeah, of course.</p> <p>12 Q. Do you recall if you reviewed this document</p> <p>13 during your time as a member of the AHERF board of</p> <p>14 trustees or a member of the AHERF finance committee?</p> <p>15 A. I don't recall, but I want to point out that</p> <p>16 my daughter died on the 17th of September of 1996,</p> <p>17 so I undoubtedly didn't have anything to do with</p> <p>18 this.</p> <p>19 Q. Again, trying to avoid what is certainly a</p> <p>20 painful topic, I will just ask you, do you recall if</p> <p>21 at any point following the date of September 11,</p> <p>22 1996 and prior to your leaving the AHERF board of</p> <p>23 trustees you ever reviewed the 1996 AHERF audited</p> <p>24 financial statements?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 49</p> <p>1 Leonard T. Ebert</p> <p>2 Exhibit 2024, I believe you will tell me is a copy</p> <p>3 of the October 30, 1997 minutes of the AHERF board</p> <p>4 of trustees?</p> <p>5 MR. UNICE: I don't doubt that that's</p> <p>6 what these are, but just for the record, they are</p> <p>7 unsigned.</p> <p>8 MR. LUFT: That's fine.</p> <p>9 A. Yes.</p> <p>10 Q. And I just want to -- do you see under</p> <p>11 "Members Absent" you were listed as being absent</p> <p>12 from this meeting?</p> <p>13 A. Yeah. That's after I was no longer there.</p> <p>14 By the way, that period is when Sherif in his</p> <p>15 infinite wisdom reorganized, severely reorganized,</p> <p>16 the whole committee structure and operations of</p> <p>17 AHERF. And that's when sitting at home I looked at</p> <p>18 the material that was going to be sent to the board</p> <p>19 and I found my name as retired. And Sherif, to be</p> <p>20 totally honest about it, two or three weeks later</p> <p>21 called me and thanked me for my service. But it was</p> <p>22 belated. I got kind of a shock when I sat at home</p> <p>23 and read that he had retired me, which is what I</p> <p>24 wanted in the first place, but...</p> <p>25 Q. If you could turn to what has been</p>

LEONARD T. EBERT

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1 Leonard T. Ebert
 2 Bates-stamped on Exhibit 2024 stamped --
 3 A. Turn to what?
 4 Q. GOV 71630.
 5 A. I've got it.
 6 Q. Do you see at the top it says "Report From
 7 the Audit Committee" and it states "Report on Fiscal
 8 Year 1997 Audited Financial Statements and Related
 9 Reports for AHERF"?
 10 A. Yeah.
 11 Q. I know you were absent from this meeting,
 12 Mr. Ebert, so I'm not going to ask you about what
 13 happened there, but what I am curious about is did
 14 you ever have the opportunity when you were a member
 15 of the AHERF board of trustees to review the fiscal
 16 year 1997 audited financial statements for AHERF?
 17 A. No, I did not.
 18 Q. Did you ever seek a copy of those financial
 19 statements while you were a member of the board of
 20 trustees?
 21 A. Keep a copy?
 22 Q. Seek a copy, ask for a copy so that you could
 23 review them while you were a member of the board of
 24 trustees.
 25 A. No. I think we have a date conflict here. I

1 Leonard T. Ebert
 2 established that during this relevant period you
 3 were just, as you said you were, either absent or
 4 not -- this was not a priority.
 5 I would like to move on to another
 6 factor which I believe began during a period that
 7 you were prior to your tragedy in which you were
 8 active for both MCP and AHERF and which you alluded
 9 to earlier. Do you recall earlier today you said
 10 that -- we talked about MCP and how it couldn't
 11 survive in the current environment prior -- and that
 12 is one of the reasons they went looking for an
 13 affiliation or a partner.
 14 MR. UNICE: Object to form. Go ahead.
 15 A. That wasn't my wisdom, but that was the
 16 conventional wisdom of thinking individuals
 17 including the healthcare field.
 18 Q. And when you say it was the conventional
 19 wisdom of people in the healthcare field, the wisdom
 20 was that you had to, I believe you said, get to a
 21 thousand beds or something?
 22 A. Well, yeah, you picked that number. I
 23 probably said that, but certainly more than 300, 350
 24 or anything in that bracket. I'll even include 400,
 25 maybe 500. It was a given that an institution was

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Page 53

1 Leonard T. Ebert
 2 was not in a position to ask for any copy at that
 3 stage in my career.
 4 Q. Okay. If you recall --
 5 A. I would have to add to this, David Barnes,
 6 who was, I guess, chairman of the audit committee or
 7 chairman of the finance committee and so on was a
 8 previous CEO of Mellon Bank and he, in my
 9 impressions when I was in his presence, got the
 10 opinion that he was impatient with anyone who would
 11 question what he had been doing or anything related
 12 to it. In other words, it was an environment that
 13 they apparently played pretty close to the vest. I
 14 was not there. But after the fact it suddenly
 15 dawned on me that this is what's been going on.
 16 I have nothing -- I had nothing to do
 17 with the audit committee. I don't recall seeing any
 18 reports from the auditors. They were all handled in
 19 Pittsburgh, I guess principally by McConnell and
 20 Sherif and so on. So that is the environment in
 21 which materials were being given to other board
 22 members. I didn't happen to be there, but that
 23 suddenly dawned on me that...
 24 Q. Well, you can put this document aside,
 25 Mr. Ebert. I think we have pretty fairly

1 Leonard T. Ebert
 2 going to fall on hard times if they couldn't expand
 3 their bed base.
 4 Q. Do you recall, Mr. Ebert, that one of the
 5 reasons that it was believed -- strike that.
 6 Mr. Ebert, was it your understanding at
 7 the time when MCP was making its decision that one
 8 of the reasons that it would not be able to survive
 9 without expanding its bed base was because managed
 10 care was rising?
 11 MR. UNICE: Object to form.
 12 Q. Let me be a little bit clearer about that.
 13 When I say "managed care was rising," the percentage
 14 of the payor mix which was attributable to managed
 15 care is what I was referring to.
 16 A. I'll have to say I don't have any way to
 17 answer that question. If you want to restate it,
 18 maybe I'll --
 19 Q. Let me break it down. Maybe my question was
 20 inarticulate.
 21 A. Managed care to me means HMOs and so on.
 22 Q. That is your understanding of managed care?
 23 A. But, frankly, not being privy to these
 24 specific figures, but I don't think managed care had
 25 a big impact on this bed question, but that's

LEONARD T. EBERT

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1
2 I have read the foregoing transcript
3 of my deposition given on Wednesday, September
4 17, 2003, and it is true, correct and complete,
5 to the best of my knowledge, recollection and
6 belief, except for the corrections noted hereon
7 and/or list of corrections, if any, attached on
8 a separate sheet herewith.
9

10
11
12 LEONARD T. EBERT
13
14
15

16
17 Subscribed and sworn to
18 before me this ____ day
19 of _____, 2003.
20
21

22
23 Notary Public
24
25

Page 75

1
2 CERTIFICATE

3 I HEREBY CERTIFY that the proceedings,
4 evidence and objections are contained fully and
5 accurately in the stenographic notes taken by me
6 on Wednesday, September 17, 2003, and that this
7 is a true and correct transcript of same.
8
9

10
11
12
13 Cynthia A. Whyte, RPR
14
15

16 (The foregoing certification of this
17 transcript does not apply to any reproduction of
18 the same by any means, unless under the direct
19 control and/or supervision of the certifying
20 reporter.)
21
22
23
24
25

20 (Pages 74 to 75)

Fast Dep.

Kimberly Fast

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PENNSYLVANIA

THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
ALLEGHENY HEALTH, EDUCATION &
RESEARCH FOUNDATION, Civil Action No.
Plaintiff, 00-684
Vs.
PRICewaterhouseCOOPERS, L.L.P.,
Defendant.

Videotape deposition of KIMBERLY
FAST, called for examination under the statute,
taken before me, Jaci R. Traver, RPR, CRR, and
Notary Public in and for the State of Ohio, at
the offices of Manion McDonough & Lucas, 600
Grant Street, Suite 1414, Pittsburgh,
Pennsylvania, on Wednesday, the 8th day of
October 2003 at 9:10 a.m.

- - - - -

Kimberly Fast

<p style="text-align: right;">Page 90</p> <p>1 know myself if they did.</p> <p>2 Q. Did you obtain a -- did you keep a</p> <p>3 copy of the debt agreement for yourself, for</p> <p>4 your own audit work, or did you make copies of</p> <p>5 the section and bring it back, or did you sit</p> <p>6 there in the file room and look at the</p> <p>7 agreement? I'm trying to figure out how you</p> <p>8 went about this.</p> <p>9 A. It would have been at the client's</p> <p>10 site, because we take -- when we go to the</p> <p>11 audit, we take the trunk there. I didn't make</p> <p>12 copies of the agreement, nor did I make a copy,</p> <p>13 to my recollection, of that section. I would</p> <p>14 have had it sitting in front of me while I was</p> <p>15 doing the work.</p> <p>16 Q. When you say, "doing the work," do</p> <p>17 you mean to refer to checking compliance with</p> <p>18 the covenants contained in the agreement?</p> <p>19 A. Yes.</p> <p>20 Q. Reperforming the calculations?</p> <p>21 A. Yes. And agreeing balances. Yes.</p> <p>22 Q. During the audit, during the 1997</p> <p>23 audit -- strike that.</p> <p>24 During the time in which you worked</p> <p>25 on checking debt compliance, did you come to</p>	<p style="text-align: right;">Page 92</p> <p>1 A. I could guess. I don't --</p> <p>2 Q. Would it include financial</p> <p>3 covenants like liquidity ratios, debt service</p> <p>4 coverage ratios, capitalization ratios,</p> <p>5 unrestricted fund balance requirements?</p> <p>6 MR. McDONOUGH: That question is</p> <p>7 asking you what you know. It's not asking you</p> <p>8 to guess.</p> <p>9 A. Right. So I guess the answer would</p> <p>10 be no.</p> <p>11 Q. Okay. Do you recall whether in</p> <p>12 your work in checking compliance with debt</p> <p>13 covenants whether or not you actually</p> <p>14 reperformed the relevant calculations for any</p> <p>15 of the covenants?</p> <p>16 A. I don't recall reperforming</p> <p>17 calculations.</p> <p>18 Q. Let me ask you what your</p> <p>19 understanding of the word "reperform" means so</p> <p>20 that I can make sure we're on the same page</p> <p>21 when you say you don't recall reperforming,</p> <p>22 because it may be different than what this</p> <p>23 document says.</p> <p>24 A. Right now as I sit here?</p> <p>25 Q. Yes.</p>
<p style="text-align: right;">Page 91</p> <p>1 learn of any concerns of Coopers not having</p> <p>2 copies of any of the agreements that you were</p> <p>3 attempting to check compliance with?</p> <p>4 A. I did not personally, no, come into</p> <p>5 that, a concern.</p> <p>6 Q. Do you believe that for any</p> <p>7 covenants that you were involved in checking</p> <p>8 that you would have had a copy of the debt</p> <p>9 agreement or, otherwise, you would have</p> <p>10 remembered that you didn't have a copy of it?</p> <p>11 A. My own practice, I would think that</p> <p>12 I would have had a copy of the ones that I</p> <p>13 worked on, but I can't recall if I didn't.</p> <p>14 Q. If we could turn back to the</p> <p>15 internal manual section, 220, and flipping one</p> <p>16 more page, section point 6. I says in part,</p> <p>17 "for objectively determinable covenants or</p> <p>18 provisions, such as working capital and</p> <p>19 debt-to-equity requirements or restrictions on</p> <p>20 annual capital expenditures, we should</p> <p>21 determine compliance by reperforming the</p> <p>22 relevant calculations."</p> <p>23 Let me ask first, do you have an</p> <p>24 understanding of what "objectively determinable</p> <p>25 covenants" means?</p>	<p style="text-align: right;">Page 93</p> <p>1 A. I would say taking the financials</p> <p>2 and putting together a calculation myself.</p> <p>3 Q. Would it also include consultation</p> <p>4 with the debt agreement and whatever it</p> <p>5 provided specific to what, for example, the</p> <p>6 numerator of liquidity ratio might be?</p> <p>7 A. Yes. Uh-huh.</p> <p>8 Q. And you don't recall doing that in</p> <p>9 conjunction with your work on the AHERF audit;</p> <p>10 is that right?</p> <p>11 MR. McDONOUGH: Is that question,</p> <p>12 asking her whether she recalls doing it?</p> <p>13 MR. TORBORG: Yes.</p> <p>14 MR. McDONOUGH: Or whether or not</p> <p>15 she recalls doing it?</p> <p>16 MR. TORBORG: I guess I don't</p> <p>17 understand the distinction. Whether she</p> <p>18 recalls --</p> <p>19 MR. McDONOUGH: The distinction is</p> <p>20 this. One question would ask her whether she</p> <p>21 recalls that she didn't do it and the other</p> <p>22 question would be whether she can recall</p> <p>23 whether or not she did it.</p> <p>24 Q. Okay. Do you recall whether you</p> <p>25 ever reperformed calculations?</p>

24 (Pages 90 to 93)

Kimberly Fast

<p style="text-align: right;">Page 94</p> <p>1 A. I do not recall.</p> <p>2 Q. Do you recall if the nature of your</p> <p>3 work was more in the nature of tying off</p> <p>4 balances from the calculations prepared by</p> <p>5 AHERF treasury, or whether it was actually</p> <p>6 taking a copy of the debt agreement, a copy of</p> <p>7 the relevant financial statements and the</p> <p>8 information, and reperforming the calculation</p> <p>9 without even looking at AHERF's calculation?</p> <p>10 A. I recall it being the first option</p> <p>11 that you had mentioned.</p> <p>12 Q. The last sentence of section point</p> <p>13 5 you read earlier states, "if provisions or</p> <p>14 covenants of debt agreements are unclear, the</p> <p>15 client should be asked to request its counsel</p> <p>16 or the lenders to provide a written</p> <p>17 interpretation of the item or items in</p> <p>18 question."</p> <p>19 Do you recall there ever being an</p> <p>20 issue during your work on the AHERF audits with</p> <p>21 debt covenants provisions being unclear?</p> <p>22 A. I do not recall that, no.</p> <p>23 MR. TORBORG: Let me mark this as</p> <p>24 4004.</p> <p>25 - - - - -</p>	<p style="text-align: right;">Page 96</p> <p>1 attention that caused us to believe that the</p> <p>2 Obligated Group was not in compliance with the</p> <p>3 covenants (insofar as they relate to accounting</p> <p>4 matters or auditing matters) contained in</p> <p>5 Section 7 of the Reimbursement and Security</p> <p>6 Agreement dated April 1, 1995 between the</p> <p>7 Obligated Group and Morgan Guaranty Trust</p> <p>8 Company of New York. It should be noted,</p> <p>9 however, that our audit was not directed</p> <p>10 primarily toward obtaining knowledge of such</p> <p>11 noncompliance.</p> <p>12 Then the next paragraph reads, "the</p> <p>13 Obligated Group's financial covenants for</p> <p>14 'Capitalization,' 'Liquidity' and 'Debt Service</p> <p>15 Coverage Ratio' for the year ended June 30,</p> <p>16 1997 was 55.8 percent, 3.77 to 1 and 2.227 to</p> <p>17 1, respectively." And then it continues on.</p> <p>18 Does this appear to be a letter</p> <p>19 that specifically focused on a specific debt</p> <p>20 agreement?</p> <p>21 A. Specific -- I'm sorry?</p> <p>22 Q. Debt agreement, specifically the</p> <p>23 Reimbursement and Security Agreement between</p> <p>24 the Obligated Group and Morgan Guaranty Trust</p> <p>25 Company.</p>
<p style="text-align: right;">Page 95</p> <p>1 (Thereupon, Deposition Exhibit 4004</p> <p>2 was marked for purposes of</p> <p>3 identification.)</p> <p>4 - - - - -</p> <p>5 Q. For the record, what we have marked</p> <p>6 as Exhibit 4004 is a letter dated January 8th,</p> <p>7 1998 from Coopers & Lybrand to the board of</p> <p>8 trustees of AHERF. It's titled, "Report of</p> <p>9 Independent Accountants." If you would just</p> <p>10 take a look at that one.</p> <p>11 A. (Witnesses reviewing document.)</p> <p>12 Q. Have you had a chance to look at</p> <p>13 this?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have an understanding of</p> <p>16 what this letter is?</p> <p>17 A. I believe it's the opinion on the</p> <p>18 consolidated financial statements.</p> <p>19 Q. You think it's the opinion on the</p> <p>20 AHERF 1997 consolidated financial statements?</p> <p>21 A. Yes.</p> <p>22 Q. If you look down at the second</p> <p>23 paragraph there, it says, "in connection with</p> <p>24 our audit of the consolidated financial</p> <p>25 statements of AHERF, nothing came to our</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Appears that they're referencing a</p> <p>2 specific agreement.</p> <p>3 Q. Do you recall being involved in the</p> <p>4 preparation of opinions like this related to</p> <p>5 specific debt agreements?</p> <p>6 A. No, I do not.</p> <p>7 Q. Do you have any understanding of</p> <p>8 what the purpose of this letter was?</p> <p>9 A. No.</p> <p>10 - - - - -</p> <p>11 (Thereupon, Deposition Exhibit 4005</p> <p>12 was marked for purposes of</p> <p>13 identification.)</p> <p>14 - - - - -</p> <p>15 Q. For the record, what we've marked</p> <p>16 as Exhibit 4005 is a series of documents</p> <p>17 bearing the Bates numbers CL 020812 through</p> <p>18 875. And the cover page is titled, "AGH Debt</p> <p>19 Covenant Calculations 6/30/97," and has some</p> <p>20 initials, KDM 9/4/97 and 9/12/97 from KLH, I</p> <p>21 believe, in the upper left-hand corner.</p> <p>22 Obviously, Ms. Fast, I'm not going</p> <p>23 to ask you to look through every document.</p> <p>24 I'll pinpoint the questions I have. But if you</p> <p>25 could just take a glance through it and let me</p>

25 (Pages 94 to 97)

DEPOSITION ERRATA SHEET

RE: THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF
ALLEGHENY HEALTH, EDUCATION AND RESEARCH FOUNDATION
VS. PRICEWATERHOUSECOOPERS, LLP

I, Kimberly Fast, wish to make the following amendments, additions, deletions or corrections to my deposition given on October 8, 2003, for the following reasons. I have signed my name to the errata sheet and authorize you to attach it to the original transcript.

<u>Page/Line #</u>	<u>Amendment</u>	<u>Reason for Change</u>
5:11	Insert "of" between "SEC" and "the".	Transcription error
91:16	Should read "It" instead of "I".	Transcription error
128:21	Should read "knowledge" instead of "acknowledged"	Transcription error
131:7	Should read "first" instead of "frist"	Transcription error
8:7	Should read "Kris" instead of "Chris"	Transcription error

In all other respects, the transcript is true and correct.

Kimberly D. Fast
Signature

Subscribed and sworn to before me this 11 day of DECEMBER, 2003.

Jane M. Young
Notary Public

File/Reference Number: 7472

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Jane M. Young, Notary Public
Upper St. Clair Twp., Allegheny County
My Commission Expires June 20, 2005

Member, Pennsylvania Association of Notaries

Fletcher Dep.

In The Matter Of:

***UNSECURED CREDITORS OF ALLEGHENY HEALTH, EDUCATION & RESEARCH
FOUNDATION v.
PRICEWATERHOUSECOOPERS***

ROBERT L. FLETCHER

September 15, 2003

***LEGALINK MANHATTAN
420 Lexington Avenue - Suite 2108
New York, NY 10170
PH: 212-557-7400 / FAX: 212-692-9171***

FLETCHER, ROBERT L. - Vol.



LEGALINK

A WORDWAVE COMPANY

ROBERT L. FLETCHER

Page 118

1 Do you recall seeing the draft consolidated
 2 financial statements for fiscal '97 at or
 3 around October of 1997?
 4 A. Generally I would recall it.
 5 Q. Just to be clear, do you recall actually seeing
 6 these particular financial statements?
 7 A. I was at the meeting. If -- if you say that
 8 these were passed out at the meeting, if they
 9 were passed out at the meeting, I was at the
 10 meeting, I must have seen them.
 11 MR. McCLENAHAN: If I can help. His
 12 question is do you remember as you sit here
 13 today in 2003, do you remember seeing these
 14 financial statements at that meeting in October
 15 of '97.
 16 THE WITNESS: No.
 17 Q. Okay. These are actually part of the board
 18 book that would be sent out prior to the
 19 meeting; is that right?
 20 MR. UNICE: Objection.
 21 A. Presumably.
 22 Q. And you recall being at the meeting; is that
 23 right?
 24 A. Yeah.
 25 Q. I'm sorry?

Page 119

1 A. I recall being at the meeting, yes.
 2 Q. How far in advance of the AHERF board meetings
 3 would you usually get the board materials for
 4 that meeting?
 5 A. I -- I really don't recall.
 6 Q. Now, if you go to page 21, again, referring to
 7 the large numbers at the top, and this is part
 8 of the financial statements that we were
 9 talking about earlier, the draft financial
 10 statements for fiscal year '97, do you see that
 11 it says net income, 21,926,000?
 12 A. Yes.
 13 Q. Do you know from looking at this how you would
 14 arrive at the operating income or operating
 15 loss, which doesn't appear to be on here?
 16 MR. UNICE: Objection, form and
 17 foundation.
 18 A. No, I don't.
 19 Q. Well, if you took out the investment income,
 20 you see investment income near the top?
 21 A. Yes.
 22 Q. And net assets released from restrictions used
 23 for operations, do you see that?
 24 A. Yes.
 25 Q. If you take those two numbers and you add them

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1 together and then you subtract them from the
 2 net income, would that be an approximation of
 3 the operating loss?
 4 MR. UNICE: Objection, form and
 5 foundation.
 6 A. I would assume that that's correct.
 7 Q. Do you -- let me ask you, do you recall seeing
 8 this particular page?
 9 A. No.
 10 Q. Now, you said that you recall being at the
 11 board meeting where these financial, draft
 12 financial statements were presented. What do
 13 you remember about that meeting, if anything?
 14 MR. UNICE: Objection.
 15 A. Nothing specifically.
 16 MR. McCLENAHAN: I think you already
 17 went through an exhibit that reflected part of
 18 what went on in this meeting, may have been
 19 minutes of the meeting. I don't know.
 20 Q. Do you recall any discussion at the October 30,
 21 1997 board meeting about the results for fiscal
 22 year 1997?
 23 MR. UNICE: Object to form.
 24 A. Specifically, no.
 25 Q. You can put this aside, and I'll show you

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1 another document that's previously been marked
 2 Exhibit 1653.
 3 Now, this is a board book or
 4 committee book for the meeting of the audit
 5 committee of AHERF for a meeting on October
 6 15th, 1997. Now, we know that you were not on
 7 the audit committee --
 8 A. Correct.
 9 Q. -- is that correct? I'd like to have you look
 10 at page 70 -- actually page 68, again, the
 11 large numbers at the top.
 12 A. Mm-hmm.
 13 Q. And if you'd actually flip to the previous
 14 page, page 67, you'll see this is the beginning
 15 of the Coopers & Lybrand management letter and
 16 AHERF management response.
 17 Even though you weren't on the audit
 18 committee, did you ever see in -- well, did you
 19 ever see at any time this Coopers & Lybrand
 20 management letter and AHERF management
 21 response?
 22 A. No.
 23 MR. McCLENAHAN: You haven't even
 24 shown him the letter yet.
 25 Q. Well, this is the beginning of the letter, and

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1 please feel free to -- to go through it.
 2 A. Well, I didn't see the letter so --
 3 Q. Just to be doubly sure, if you look at page 70
 4 where the letter continues, it says General
 5 Overview.
 6 A. All right.
 7 Q. This is all part of the letter, and I just
 8 wanted to make sure if you look at this that
 9 you can confirm that you haven't seen it or
 10 maybe you have seen it?
 11 A. I have not seen it.
 12 Q. Okay. Good. You can put that aside.
 13 A. Just occurred to me if I stack this up in front
 14 of me that reasonably soon I would no longer be
 15 videotaped.
 16 Q. You can build an igloo.
 17 While you were affiliated with AHERF,
 18 what was your view of the integrity of
 19 Mr. Abdelhak? And if it changed over time,
 20 then let me know that.
 21 A. From my initial meeting with him until the time
 22 he was no longer affiliated?
 23 Q. Correct.
 24 A. I would say I was impressed with his
 25 credentials and his performance up until the

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1 time it appeared that things were not going
 2 according to a plan that I had not seen in
 3 detail.
 4 Q. And when roughly was that?
 5 A. I would say as a general point of demarcation
 6 mid-'97.
 7 Q. Now, had you heard at any time prior to his
 8 termination anyone else voice any concerns
 9 about Mr. Abdelhak's integrity?
 10 A. No.
 11 Q. Did you consider Mr. Abdelhak to be someone who
 12 was open to other people's suggestions?
 13 A. Yes, that's as opposed to no.
 14 Q. Do you need to explain that a little bit or --
 15 A. I -- I can't honestly answer yes without saying
 16 that because I have no idea of how many
 17 suggestions people have made to him that I saw
 18 manifested eventually.
 19 Q. Okay. Well, speaking about your own personal
 20 experience, did you feel comfortable making
 21 suggestions to him?
 22 A. Yes.
 23 Q. Did you ever make a suggestion to him that you
 24 thought was contrary to his own way of
 25 thinking?

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1 MR. UNICE: Object to form.
 2 A. No.
 3 Q. What was your view of the integrity of
 4 Mr. McConnell during the same time period,
 5 while you were on the AHERF board until his
 6 termination? And if it changed, then let me
 7 know.
 8 A. Probably comparable.
 9 Q. Meaning that it changed for the worse at around
 10 the same time that it did for Mr. Abdelhak?
 11 A. Yes.
 12 Q. Were you on the executive committee when
 13 Mr. Abdelhak was terminated?
 14 A. Yes.
 15 Q. And why was he terminated?
 16 A. I would have to say in as few words as possible
 17 a gross dissatisfaction with his -- his
 18 performance.
 19 Q. Were you involved with the decision as to who
 20 his replacement would be?
 21 A. Yes.
 22 Q. And he was replaced by Mr. Sanzo?
 23 A. Yes.
 24 Q. How was Mr. Sanzo chosen to -- to be the one
 25 who would replace Mr. Abdelhak?

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1 A. How was he chosen?
 2 Q. Right. Let me clarify that. Why Mr. Sanzo
 3 instead of anyone else?
 4 A. Basically because of the need for someone to
 5 step into that position very quickly and is
 6 experienced with the components of the system.
 7 Q. At the time he was replacing Mr. Abdelhak, did
 8 you have a view as to any -- any differences in
 9 the way they thought the organization should be
 10 run going forward between Mr. Abdelhak and
 11 Mr. Sanzo?
 12 MR. UNICE: Object to form.
 13 A. At the time that the decision was made to
 14 select him as the replacement?
 15 Q. Right.
 16 A. No.
 17 Q. While you were on the AHERF board, did you have
 18 any concerns about the number of members on the
 19 board, meaning that there were too many or too
 20 little?
 21 MR. UNICE: Object to form.
 22 A. Yes.
 23 Q. And what were your concerns?
 24 A. Well, they -- they came from my experience with
 25 a much more small board, much smaller board and

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<p style="text-align: right;">Page 162</p> <p>1 A. No.</p> <p>2 Q. No reason to believe you weren't presented with</p> <p>3 those --</p> <p>4 A. No.</p> <p>5 Q. -- you just can't recall it; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Do you recall whether or not any</p> <p>8 representatives from Coopers & Lybrand ever</p> <p>9 attended an AHERF board meeting?</p> <p>10 A. No.</p> <p>11 MR. FRIESEN: Objection. You mean</p> <p>12 while he was on the board obviously?</p> <p>13 Q. While you were an AHERF board member?</p> <p>14 A. Correct.</p> <p>15 Q. Same answer?</p> <p>16 A. Same answer.</p> <p>17 Q. Now, you were a board member of Forbes Health</p> <p>18 System for several years before becoming an</p> <p>19 AHERF board member; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And I'd assume you had external auditors for</p> <p>22 that enterprise as well?</p> <p>23 A. Yes.</p> <p>24 Q. And they would audit the financial statements</p> <p>25 on a yearly basis of that enterprise?</p>	<p style="text-align: right;">Page 164</p> <p>1 place on the outside auditors when they issued</p> <p>2 their audited year-end report?</p> <p>3 A. That the numbers in the audited financial</p> <p>4 report were verifiable by them, without</p> <p>5 exception, unless so noted.</p> <p>6 Q. Do you also have a general understanding of</p> <p>7 what the term materiality means in the context</p> <p>8 of a financial statement?</p> <p>9 A. Yes.</p> <p>10 Q. Generally what's your understanding of that</p> <p>11 term?</p> <p>12 A. That it makes a difference.</p> <p>13 Q. And if something's material in an auditor's</p> <p>14 view, what is your understanding of their</p> <p>15 obligations if that occurs?</p> <p>16 A. To report it.</p> <p>17 Q. To whom or to who, to whom?</p> <p>18 A. To the audit committee.</p> <p>19 Q. Now, if Coopers & Lybrand had told you in</p> <p>20 fiscal year '96 or '97 that the financial</p> <p>21 statements that have been presented to them for</p> <p>22 audit were materially misstated and that they</p> <p>23 were therefore issuing an adverse opinion, an</p> <p>24 unclean opinion, would that have caused you any</p> <p>25 concern?</p>
<p style="text-align: right;">Page 163</p> <p>1 A. Yes.</p> <p>2 Q. Based on your board experience at Forbes as</p> <p>3 well as AHERF, what is your understanding of</p> <p>4 the -- or the relevance of an outside auditor's</p> <p>5 opinion to an enterprise's financial</p> <p>6 statements?</p> <p>7 MR. FRIESEN: Objection.</p> <p>8 A. In a word, verification.</p> <p>9 Q. Would you agree that -- do you have an</p> <p>10 understanding of what the term a clean opinion</p> <p>11 or unqualified opinion is?</p> <p>12 A. Yes.</p> <p>13 Q. Tell me what you think that means.</p> <p>14 A. I knew you were going to ask. Unqualified</p> <p>15 essentially in the context as I understand it</p> <p>16 and have used it is that there was nothing</p> <p>17 there that the auditors felt worthy of bringing</p> <p>18 to the attention as produced in the audited</p> <p>19 financial statements.</p> <p>20 Q. Did you as an AHERF board member rely on</p> <p>21 Coopers & Lybrand to provide this verification</p> <p>22 of AHERF's financial statements?</p> <p>23 A. Yes.</p> <p>24 Q. Now, as an outside trustee of a nonprofit</p> <p>25 entity, what reliance, if any, then did you</p>	<p style="text-align: right;">Page 165</p> <p>1 MR. FRIESEN: Objection, calls for</p> <p>2 speculation.</p> <p>3 A. Yes.</p> <p>4 Q. Why is that?</p> <p>5 A. Well, because in the normal circumstance,</p> <p>6 that's something that you'd like to know more</p> <p>7 about.</p> <p>8 Q. Would you expect as an external trustee of</p> <p>9 AHERF that material misstatements, if found,</p> <p>10 would be presented to the audit committee?</p> <p>11 MR. FRIESEN: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. What options would you have had as an AHERF</p> <p>14 trustee if you had those concerns in a</p> <p>15 situation we are talking about?</p> <p>16 MR. FRIESEN: Objection, calls for</p> <p>17 speculation.</p> <p>18 A. Well, the best way I can answer that is to say</p> <p>19 that would very much depend on the report of</p> <p>20 the audit committee and their reflections and</p> <p>21 recommendations to the board as -- as a</p> <p>22 reconciliation of what had been noted.</p> <p>23 Q. So if the audit committee agreed with Coopers'</p> <p>24 decision or Coopers' view that there were</p> <p>25 material misstatements, you'd be faced with</p>

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1 several options as a trustee; right?
 2 MR. FRIESEN: Objection.
 3 A. Let me answer in this way: For instance, if
 4 there was a material difference and the audit
 5 committee upon examination decided that they
 6 didn't feel that that was substantial and
 7 reported that to the board, the board
 8 presumably would not pursue that any further.
 9 Q. So in your view you would have relied on the
 10 audit committee's response to Coopers bringing
 11 this to their attention?
 12 MR. FRIESEN: Objection.
 13 A. Yes.
 14 Q. I'm sorry, I couldn't hear you there.
 15 A. Yes, I'm sorry.
 16 Q. Would your response be the same if C & L had
 17 told the audit committee that fiscal '96 or
 18 '97, that the financial statements presented by
 19 management had been intentionally misstated --
 20 MR. FRIESEN: Objection.
 21 Q. -- in a material fashion?
 22 MR. FRIESEN: Same objection.
 23 A. If it were reported by them?
 24 Q. Yes, sir.
 25 A. I think that would depend on what they reported

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1 and then the reaction of the internal audit and
 2 financial people as to the severity of that
 3 difference.
 4 Q. Again, you'd rely on the audit committee's
 5 response to that report in forming your
 6 decisions?
 7 MR. FRIESEN: Objection.
 8 A. Yeah, yes.
 9 Q. Now, do you have a general understanding of
 10 what generally accepted accounting principles
 11 are or GAAP?
 12 A. Yes, generally without being --
 13 Q. You and I both. What's your understanding of
 14 the term GAAP?
 15 A. Those are the guidelines laid down by the
 16 accounting industry to clarify those things
 17 that nobody else would understand.
 18 Q. Now, if the auditors had come to the audit
 19 committee in 1996 or '97 and reported that in
 20 their view the financial statements presented
 21 to them were overstated by between 80 and \$100
 22 million due to GAAP violations, would that have
 23 caused you concern?
 24 MR. FRIESEN: Objection, calls for
 25 speculation and lack of foundation.

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1 MR. McCLENAHAN: This is '96 or --
 2 MR. UNICE: '96 and '97, yes, sir.
 3 A. Yes.
 4 Q. And what kind of response would you have had as
 5 a trustee?
 6 MR. FRIESEN: Objection.
 7 Q. Let me ask it a different way. Would you have
 8 made some inquiries to see why that had
 9 happened?
 10 A. Yes.
 11 MR. FRIESEN: Objection.
 12 Q. Would another option have been --
 13 A. Unless it was explained through the actions of
 14 the audit committee.
 15 Q. And if the questions weren't answered, would
 16 another option be to engage perhaps outside
 17 consultants to look at the issue?
 18 MR. FRIESEN: Objection.
 19 A. Could be remedial.
 20 Q. Would you also perhaps, is it possible to
 21 instruct the auditors to revise their audit
 22 scope and their procedures if that were the
 23 case?
 24 MR. FRIESEN: Objection.
 25 A. I don't think I could rule that out.

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1 Q. If the auditors came to you with that concern,
 2 would you also perhaps have considered
 3 evaluating whether financial management at
 4 AHERF should be retained?
 5 MR. FRIESEN: Objection.
 6 A. Again, it would depend on the circumstance, the
 7 severity, the depth of research and the audit
 8 committee and their report to the board.
 9 Q. Now, if the auditors had come to you in '96 or
 10 '97 and said that based on information they
 11 reviewed, they did have, in fact, concerns with
 12 the integrity and honesty of members of AHERF's
 13 financial management, would that have caused
 14 you concern?
 15 MR. FRIESEN: Objection, calls for
 16 speculation.
 17 A. You are saying if they would have come to you.
 18 Q. Yes, sir.
 19 A. As opposed to coming to the board or
 20 communicating in some fashion to the board or
 21 the audit committee or someone.
 22 Q. We'll start with you personally.
 23 A. If they would have come to me personally?
 24 Q. Yes, sir.
 25 A. I consider that to be extraordinary.

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<p style="text-align: right;">Page 170</p> <p>1 Q. Would that have caused you concern, that 2 information they relayed to you? 3 A. Depended upon what the information was, the 4 materiality, dimension of it. 5 Q. If the information was in their view material, 6 in the auditor's view material, would you have 7 evaluated or at least researched what had 8 happened? 9 MR. FRIESEN: Objection, calls for 10 speculation. 11 A. I personally? 12 Q. As an AHERF board member. 13 A. As an AHERF board member, I personally probably 14 would not have. I would have -- I would have 15 suggested there were reasons to have that done. 16 Q. To whom would you have made that suggestion? 17 MR. FRIESEN: Objection. 18 A. Well, either the CEO or the CFO or both. 19 Q. Would your response be the same if C & L had 20 come to the AHERF board with that same 21 information? 22 MR. FRIESEN: Objection. 23 A. The same circumstances? 24 Q. Yes, sir. 25 A. I'm not sure, and my hesitancy is because if I</p>	<p style="text-align: right;">Page 172</p> <p>1 (The witness reviewed the Exhibit.) 2 - - - - 3 MR. McCLENAHAN: Are we on the 4 record? 5 MR. UNICE: Yes. 6 MR. McCLENAHAN: Is there a question? 7 MR. UNICE: Yes. I was giving the 8 witness a chance to review the document. 9 THE WITNESS: Yes. 10 BY MR. UNICE: 11 Q. Have you had a chance to do so? 12 A. Yes. 13 Q. Exhibit 1992 is Bates labeled TACO 56657 CM 14 through 56661 CM. The first page states, 15 Meeting of the board of trustees for Allegheny 16 Health, Education and Research Foundation for 17 August 27th, 1998. 18 Do you see your name on the first 19 page as a member being present at that meeting, 20 Mr. Fletcher? 21 A. Yes. 22 Q. Do you recall sitting here today attending a 23 meeting of the board on 8/27/1998? 24 A. I do not. 25 Q. Take a look for me at the last page of the</p>
<p style="text-align: right;">Page 171</p> <p>1 seem to be the outlier in that group, I may 2 have been just being more contrition about it 3 than others, so if everybody else on the board 4 was satisfied, I'd have to look more 5 introspectively at why I felt the need for 6 that. 7 Q. Do you recall while you were an AHERF board 8 member at some point in 1998 the organization 9 decided to not retain Coopers & Lybrand to do 10 an additional audit? 11 A. I don't. 12 Q. Let me show you a document that might help 13 refresh your memory. 14 - - - - 15 (Exhibit 1992 marked for identification.) 16 - - - - 17 Q. Did you have a chance to review Exhibit 1992? 18 A. In its entirety, no. 19 Q. Go ahead and take a look. I think it's five 20 pages. 21 MR. FRIESEN: That's between 1 and 22 400 for the record. 23 MR. UNICE: But not between 100 and 24 400. 25 - - - -</p>	<p style="text-align: right;">Page 173</p> <p>1 document ending in Bates 56661. 2 A. Mm-hmm. 3 Q. I'm going to take a look at some handwriting 4 here and kind of decipher it. Underneath Roman 5 numeral VI, which is labeled Executive Session? 6 A. Yes. 7 Q. Do you see there's a notation that says, Also 8 discussed auditors? 9 A. Yes. 10 Q. And then a few lines down it says, Think will 11 have serious conflicts with C & L? 12 A. Yes. 13 Q. And then, Rec changing, underneath that? 14 A. Yes. 15 Q. It also follows that it says, KPMG or Deloitte 16 both good firms. Decided on KPMG for the W, 17 that's what it appears to be, Deloitte to do 18 procedures for E, or east I'm assuming, if 19 court approves. 20 Do you see that? 21 A. Yes. 22 Q. Does this help refresh your memory at all as to 23 any discussions at the AHERF board about 24 deciding to not retain Coopers & Lybrand or to 25 replace them with other firms?</p>